



**Isle of Man**  
**Government**

*Reiltys Ellan Vannin*



## **The Terrorism and Crime (Miscellaneous Amendments) Bill 2015**

### **Consultation Responses**

**Cabinet Office**  
**Oik Coonceil ny Shirveishee**

**September 2015**

## **1. Introduction**

- 1.1 The Terrorism and Crime (Miscellaneous Amendments) Bill 2015 was issued for consultation on 11 August 2015 with a deadline for responses of 22 September 2015.
- 1.2 The Bill relates to the international obligations of the Isle of Man in respect of Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT). The provisions reflect the ongoing challenge of addressing threats around terrorist financing and money laundering relating to serious organised crime and corruption.
- 1.3 The Bill has been amended in some areas based on the responses received.

## **2. Overall responses**

- 2.1 The consultation document was issued to all Government Departments, Statutory Boards, Offices, local authorities and other stakeholders such as Financial Supervision Commission licenceholders and professional bodies.
- 2.2 A total of 16 responses to the consultation document were received and a list of respondents is included at Annex B. The Council of Ministers welcomed the responses and considered each comment made in the final drafting of the Bill. On the whole the responses received were supportive of the need to introduce such changes to enhance the international reputation of the Island and facilitate quality international business. The main area of concern was with regards to the lack of requirement in the legislation for consultation under the new sections to be inserted into the Anti-terrorism and Crime Act 2003, the Proceeds of Crime Act 2008 and the Terrorism and other Crime (Financial Restrictions) Act 2014 respectively. These new sections confer authority on the Council of Ministers to make provision by order to amend the three Acts, when this is considered to be necessary and appropriate, to support the Island's compliance with evolving standards or operational practices by designated international bodies.
- 2.3 The table at Annex A shows the responses received and indicates whether they have been taken into account and the Bill amended, together with the consideration of the Council of Ministers where appropriate.
- 2.3 Typographical amendments and, in some cases, clarification amendments have not been listed.

## **3. Next Steps**

The Bill will now be the subject of Parliamentary scrutiny. The legislative process is explained on the Tynwald Website under 'How Bills become Law' on the following site:

<http://www.tynwald.org.im/about/legproc/Pages/default.aspx>

CONSULTATION RESPONSES 22<sup>nd</sup> SEPTEMBER 2015**Timing of consultation**

<b>Issue raised</b>	<b>Response</b>
<p>One respondent noted that holding the consultation at the height of summer might limit the scope of responses from potentially interested parties. They also noted that the timing of the Bill was open to interpretation as being reactive, rather than a proactive development of the Island's regulatory framework following consideration of international norms and standards.</p>	<p>The consultation began in August and has been open for a full 6 weeks, closing in mid-September. The publication of the consultation was accompanied by a press release and it has been available on the Government website throughout the period. The Bill is quite short and the provisions are relatively straightforward. It is considered therefore that interested parties will have had sufficient opportunity to submit their views and that an extension for further consideration is not required. The Bill addresses some issues that have been identified by the Isle of Man Government and also ones that have arisen from AML/CFT evaluations elsewhere. The Government seeks to be proactive in monitoring international developments in this area and implementing revised legislation where required. Strengthening areas that have previously been identified by international evaluators as problematic is considered to be a reasonable response, but the views of industry on such measures must and will continue to be taken into account.</p>

**Section 3.1 – clause 4**

<b>Issue raised</b>	<b>Response</b>
<p>One respondent felt that the scope of section 21A of the 1991 Act could be expanded to add a measure of explicit clarity to the current section 21A, to protect the origin of the requesting country.</p>	<p>Whilst the advice of the respondent was appreciated, following further consideration by the authorities it was concluded that this provision was unnecessary and therefore clause 4 'Use of Evidence Obtained' will be removed from the Bill.</p>

### Section 3.2 – clause 5

Issue raised	Response
<p>One respondent felt that Clause 5 properly addressed the current limitations of section 53 of the 2001 Act and that it should go further with the definition extending to cover Member States of the European Union and to Crown Dependencies and overseas territories and possibly the commonwealth.</p>	<p>Clause 5 as drafted already covers the Crown Dependencies the European Union and countries or territories to which the Warsaw Convention extends. The scope of the Clause has now been extended to cover the British Overseas Territories and an enabling power for other jurisdictions to be added in the future, subject to normal consultation procedures.</p>

### Section 3.4 - clauses 7, 15 and 19

Issue raised	Response
<p>Six respondents raised concerns that consultation with relevant parties was not a <i>requirement</i> under the new sections to be inserted into the Anti-terrorism and Crime Act 2003, the Proceeds of Crime Act 2008 and the Terrorism and other Crime (Financial Restrictions) Act 2014 respectively. These sections confer authority on the Council of Ministers to make provision by order in connection with the implementation of relevant international obligations or standards, or recommendations of international bodies (those bodies defined as the FATF, the IMF and Moneyval).</p>	<p>These sections of the Bill were introduced to address the ongoing challenges for the Island as an International Finance Centre in responding in a timely manner to international AML/CFT standards. It was recognised however, that in facilitating the introduction of such legislation, where such legislation is required, that appropriate scrutiny would be essential.</p> <p>Consequently the Bill requires a two-stage Tynwald process with an Order being laid before Tynwald in draft at one sitting and the draft Order moved for approval at a following sitting before the Order could be made, thus providing time for further consideration. Orders would be subject to the Government 'Code of Conduct on Consultation' which requires as standard a 6 week consultation period with relevant parties; however this was not included as a legislative requirement.</p> <p>Although in practice consultation with relevant stakeholders would have taken place before a draft Order was submitted to Tynwald, as a result of the representations received, the Bill has been amended to make this requirement for consultation explicit and statutory as follows:</p> <p>'No order under subsection (1) may be made unless –</p> <p>(a) The Council of Ministers has consulted such persons and bodies as it considers</p>

	<p>appropriate<sup>1</sup>; and</p> <p>(b) A draft of the proposed order has been laid before a sitting of Tynwald and that draft order has been approved at a subsequent sitting of Tynwald.'</p>
<p>The Chamber of Commerce also responded that a formal advisory group/committee (at the highest level of seniority) needed to be established to look holistically at the requirements for appropriate legislation/regulation balanced with the needs of enabling business to operate and to effectively evaluate and interpret '(evolving) international standards and recommendations' whilst protecting the Islands reputation.</p>	<p>The Government has an industry consultative body, the 'Joint Anti Money Laundering Advisory Group' (JAMLAG) which meets around 3 times a year and is chaired alternately by the Chief Executives of the Financial Supervision Commission, the Insurance and Pensions Authority and the Department of Home Affairs (as the sponsor of AML/CFT legislation).</p> <p>JAMLAG is a representative discussion forum for regulators, law enforcement authorities and industry. It aims to; provide a forum in which key stakeholders can comment and advise on prospective changes to AML/CFT regulations and guidance; foster coordination of AML practices between different industry sectors and to act, as appropriate, as a review body for major changes to international ML standards which might be promulgated.</p> <p>It has been recognised that this body needs to be revised and possibly reformed to ensure that it can effectively meet the needs of business and act as an effective consultative body with a voice at senior Government level. The creation of a new Financial Services Authority has brought this matter into sharper focus and, at the last meeting of JAMLAG on 10 September 2015, it was agreed with industry representatives that proposals to deliver these outcomes should be put forward for consideration.</p> <p>Proposals from the Chamber for delivering changes that improve consideration of and consultation on AML/CFT matters in light of the above, via JAMLAG or in another forum, would therefore be timely and welcomed and will be sought.</p>
<p>One respondent observed that while similar powers exist in statute to amend primary legislation by order the majority relate to mirroring or adopting, in whole or in part, UK legislation. As such, what is being adopted by order in those circumstances will commonly be more clear cut and definite in</p>	<p>It is accepted that the Recommendations of the FATF are not drafted as legislative instruments or with a particular jurisdiction in mind, but where the IOM has been assessed against those Recommendations by the IMF or MONEYVAL that assessment will of course be specific to the IOM.</p> <p>In making an order to amend one of the relevant Acts into which the power will be inserted, the Council of Ministers will take in account a wide range of issues, including the</p>

<sup>1</sup> Where there is a statutory requirement to consult such persons and bodies as considered appropriate, this has to be read as including consultation with those persons and bodies that may be significantly affected by the proposals.

<p>intention than the recommendations of the FATF, the IMF or MONEYVAL which are not drafted as legislative instruments or with a particular jurisdiction in mind. Thus, the adoption of such external recommendations by themselves could lead to issues of compatibility with the Island's existing laws and thus lead to uncertainty that could be harmful.</p>	<p>reputational and economic implications of any such order (or of not making such an order) and amendments will be tailored to Isle of Man's particular circumstances. In response to other comments received there will also be a requirement for the Council of Ministers to consult prior to making an amendment order.</p>
<p>One respondent proposed that rather than orders originating from the Council of Ministers it would be more appropriate for this to be delegated to the Isle of Man Financial Services Authority as the primary impact of the recommendations will most likely fall upon the regulated financial sector and designed businesses, for which the IOMFSA will have responsibility for licensing and registration.</p>	<p>It is appropriate for the Isle of Man Government in the form of the Council of Ministers to be responsible for the policy rather than the IOMFSA as the regulator.</p> <p>Whilst the regulator has a comparatively narrow remit the Council of Ministers can take a broader view taking in reputational, economic and other considerations.</p> <p>In addition, as referred to above, there will be a requirement for the Council of Ministers to consult prior to making any amendment order. The IOMFSA, its licence holders and other bodies which it has responsibility in respect of AML/CFT compliance will of course be amongst those which will have an opportunity to comment any proposals.</p>

### Section 3.6 – clause 11

<b>Issue raised</b>	<b>Response</b>
<p>One respondent welcomed the increased sentencing tariff proposed but commented that the penalty for the active / contemplated offence 'tipping off' (Section 155(2)) in the Proceeds of Crime Act might now appear to be comparatively lenient when set besides s. 144, also relating to the regulated sector.</p>	<p>The comment is noted; however, there is no intention to review the penalty for 'tipping off' at this time.</p>

**Section 3.7 – clause 17**

<b>Issue raised</b>	<b>Response</b>
<p>One respondent commented in detail regarding the amendment to the definition of 'designated person' such that this will include a 'designated person' under a UN or EU sanction. The amendment will make that requirement apply immediately after being passed by the UN/EU rather than waiting for implementation through the EU and/or HMT. The respondent expressed concerns regarding the legal position of adopting UN/EU sanctions directly rather than waiting for a UK legal instrument to be made and that potentially, with the IOM moving ahead of the UK, this might create a conflict.</p>	<p>This provision is included in the Bill as a response to growing concerns expressed in the length of time it can take for the EU/HMT to legislate for sanctions passed by the UN thus enabling potential 'asset flight'. This is a matter that is now being widely discussed and the Isle of Man proposes to address the issue by mirroring provisions adopted by Jersey earlier this year. The Isle of Man has an obligation under international law to give effect to international sanctions as soon as they are adopted and, as the Island makes its own statutory provisions for this purpose, there is no requirement to wait for the EU or HMT to make their own instrument to give such sanctions effect. Where businesses operate across a number of jurisdictions it will in any case be essential for them to be compliant with such sanctions as may be in force in each of those jurisdictions at the time they come into effect (and this will vary from country to country). It is recognised that it will be especially important to provide clear and timely notification to businesses in the Isle of Man when sanctions come into force and the Customs and Excise Division is aware of this issue and will look at measures to further improve awareness and notifications.</p>
<p>Two amendments were identified in respect of this clause, which were identified internally. The first concerns the reference to a 'list' and the second addresses the Tynwald process for making orders under this part.</p>	<p>The Counter Terrorism Committee established pursuant to resolution 1373 (2001) does not maintain a list and therefore subparagraph (iii) will be removed from the new paragraph (c).</p> <p>A required amendment to the drafting of this clause has been identified by the authorities to address a situation such as the UN adopting in July a new UNSCR which had a Sanctions Committee and list established by it, but the Island not being able to link to that new terrorism sanctions list until after October Tynwald. The Tynwald procedure will therefore need to address this possibility such that Clause 17(4) of the Bill would read as follows:</p> <p>(4) After subsection (1) insert —  “(2) The Council of Ministers may by order amend the definition of “designated person” in subsection (1) to reflect changes to EU or United Nations instruments.  (3) An order under subsection (2) must be laid before Tynwald as soon as practicable after it is made, and if Tynwald at the sitting at which the order is laid or at the next following sitting fails to approve it, the order shall cease to have effect.”.</p> <p>This Tynwald procedure is line with the procedure that has been in place for a number of</p>

	years for the application of EU sanctions legislation using the powers in the European Communities (Isle of Man) Act 1973.
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**'Adequate Consideration Defence'**

<b>Issue raised</b>	<b>Response</b>
One respondent proposed that the Bill represented an opportunity to restore the "adequate consideration" defence in the Proceeds of Crime Act 2008 (the defence formerly in section 141(2)(c) of POCA which was repealed without consultation in 2010).	The Government is not minded to revisit the issue of "adequate consideration" in this Bill. Nevertheless the Government has previously invited and remains open to receiving specific evidence of any difficulties experienced in respect of the repeal of this defence and this will be given careful consideration.



**Reponses Received**

Chamber of Commerce

Isle of Man Law Society

Lloyds TSB

AXA Isle of Man

K O'Loughlin, Advocate

Iain Bradley, Solicitor Advocate

One response treated as confidential

Treasury Social Security Division

Treasury Customs and Excise Division

External Relations, Cabinet Office

Department of Infrastructure

Department of Environment, Food and Agriculture

Marown Parish Commissioners

Jurby Parish Commissioners

Ballaugh Parish Commissioners

Andreas Parish Commissioners